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C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 006363

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STATE FOR EAP/MLS AND EB
COMMERCE FOR EAP/MAC/OKSA
TREASURY FOR OASIA
STATE PASS TO USTR FOR WEISEL
STATE PASS TO FEDERAL RESERVE SANFRANCISCO FOR DAN FINEMAN
STATE PASS TO FEDERAL RESERVE NEW YORK FOR MATT HILDEBRANDT

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TAGS: ECON PGOV PHUM PREL TH
SUBJECT: THAILAND PURSUES CASE AGAINST SINGAPORE INVESTOR

REF: A. A. BANGKOK 5706

¶B. B. BANGKOK 6002
¶C. C. BANGKOK 6080
¶D. D. BANGKOK 6156

Classified By: DCM ALEX ARVIZU FOR REASONS 1.4 B AND D.

¶1. (C) Summary. The RTG is expected to announce soon a reinterpretation of the rules governing the Foreign Business Act cap on foreign shareholding in Thai service sector companies and what it will do about Temasek's USD $1.9 billion purchase of Shin Corp in particular. Its decision will have a major impact on near term foreign direct investment inflows to Thailand. Singapore investors, a major source of Thai FDI, are demanding clear and rules as a minimum in order to again consider investing in Thailand. For some, however, even that may not be sufficient to overcome the mistrust that recent Thai actions have caused. The new Thai leaders find themselves in a bind: under pressure to validate charges of financial improprieties against deposed PM Thaksin, the newly appointed government feels the political imperative to find legal fault with the Shin/Temasek deal. That goal could clash with the need to reassure international investors that Thailand remains a welcoming destination. Reconciling these conflicting aims is the biggest economic challenge faced by the Thai government. End Summary.

¶2. (C) Ever since the sale of former PM Thaksin's family holding company, Shin Corp, to Singapore's Temasek, the Thai press has been running articles highly critical of the Singapore government-owned investment company and the Singapore government itself. They stand accused of abetting the USD $1.9 billion tax-free liquidation of Thaksin's assets, of knowingly structuring the transaction in violation of Thailand's restrictions on foreign ownership, and of seeking to control a strategic set of assets (satellite, television channel and mobile telephone network) that many Thai commentators argue by law and for security should be owned only by Thais. As reported in reftels, the foreign ownership issue has spread beyond Shin/Temasek and the telecom sector to foreign ownership rules in general with sixteen major companies with significant foreign ownership (including Tesco, DHL Logistics (Thailand), Siam City Cement, and Carrefour) currently under investigation for potentially

violating the ownership restriction contained in Thailand's Foreign Business Act (FBA).

¶3. (C) The FBA basically restricts foreign ownership in the service sector to a maximum of 49 percent ownership. Until now, ownership was defined as simply the number of shares owned and whether the owner was considered a Thai. This meant that actual management control of a company, the right to name members of the board, differing share classifications with differing voting and/or dividend rights and, especially, the use of various holding company structures to hold the shares in the operating company (nominees) were all widely-used tools to get around the Thai restriction. Lawyers here, who have widely advised on setting-up the necessary structures and often acted as de- facto shareholders for their foreign clients, are now advising their clients to "wait and see" - unwilling to provide formal legal advice until the Thai government clarifies their interpretation of the FBA.

¶4. (C) Singapore is the second largest source of direct foreign investment in Thailand - its USD $21 billion placing it behind Japan and just ahead of the US as a source of Thai inward investment. To gauge the effect of recent Thai discussion of foreign investment regulations in general and Singapore investment in particular, Singapore and visiting Bangkok econoffs met on October 10-11 with a variety of major Singaporean investors in Thailand and Singapore-based bank analysts who cover Thailand. Among portfolio investment advisors, the feeling was that long-term, buy-and-hold, investors have largely stopped purchasing additional positions and will probably stay in that mode until new elections are held. They ascribe the foreign inflows into the Thai stock market (SET) since the coup to hedge funds and

other short-term investors and expect trading volumes on the SET to remain low.

¶5. (C) Temasek's Chief Investment Officer, Charles Ong, lamented the probable loss he will have to take on their investment in Shin. Both he and his investment advisor on the transaction, Goldman Sachs, accepted that Temasek would probably have to restructure their shareholding in Shin to clearly go below the 49 percent foreign ownership cap. If they sold at current market prices, this would mean a loss of up to US$340 million on their initial investment.

¶6. (C) Ong and Goldman Sachs (Singapore) Managing Director Richard Ong (no relation) strongly refuted the charge that Temasek was politically tone-deaf in pursuing the Shin deal. Richard claimed that Thaksin went to see King Bhumiphol on two occasions to confirm the monarch's approval for the sale of Shin to Temasek. Charles argued that they purposely sought out Siam Commercial Bank (SCB) as an advisor to the deal and investor in one of the Shin Corp holding companies (nominees) because 1) former PM Anand Panyarachun is an SCB director and has strong ties to the Democrat Party (Note: Not correct; Anand does not belong to any Thai political party.) and 2) SCB is 24 percent owned by the Crown Property Bureau and is one of the monarchy's largest investments and sources of income. Vichit Suraphongchai, the Executive Chairman of SCB is also an advisor to the Crown Property Bureau. After the Temasek transaction, he was named to the Shin Corp board. (Comment: Knowledgeable lawyers in Bangkok say that many "sensitive" deals are done with SCB participation because of the inferred protection of the monarchy SCB provides. This assumption apparently is no longer valid and some wonder how SCB will compete and whether some investors will avoid Thailand in the future because the political uncertainty is seen to have increased, with "monarchy insurance" apparently no longer trusted. End Comment.) Ong and Goldman Sachs both indicated that it will be some time before either will consider further investments in Thailand.

¶7. (C) Temasek's Charles Ong believes that the coup was the

reaction of the old Bangkok elite reasserting itself against the new rich of whom Thaksin was both prime example and leader. From this he extrapolates that many of the old elite lost considerable assets in the wake of the 1997 crises and were forced to sell off these assets at "fire- sale prices" to foreigners. With a reinterpretation of the FBA, the opportunity could arise whereby foreigners will have to rapidly sell down their holdings in their Thai operations, thus creating a buyer's market for these shares, and allowing the elite to buy these shares at artificially low prices. (Comment: While we believe that this is a bit too extreme an interpretation, the fact that it is coming from a key Asian investor is a bad sign for future investment in Thailand, especially if any future actions by the interim government somehow augment this negative view. End Comment.)

¶8. (C) Senior Singtel officials said that they invested in Thaksin's AIS cell phone company in 1998 and currently own 20 percent of that entity. They claimed that they have had no discussions with their majority shareholder, Temasek, about combining their ownership in AIS. AIS' concession to operate expires in 2015 and clearly Singtel has doubts that AIS will win a license to offer 3G telecom services or have their concession will be converted to a license license before that time although, as they noted, the concession agreement makes no mention of foreign ownership as an issue. Singtel is also concerned that AIS will not win a license to offer 3G telecom services, which would help AIS eliminate costly revenue sharing requirements for 2G services under its concession with state-owned TOT. With Thailand's National Telecom Commission currently considering new regulations that would further limit foreign ownership in the telecom sector, Singtel is clearly concerned about the future of their investment, although they expressed confidence that they had a "reasonably iron-clad contract." They did not offer what they plan to do about it.

¶9. (C) In the property sector, Banyan Tree Resorts told us that they have put a major new investment in Chiang Mai on

hold until things "clarify." In the interim, they continue to make money from their Thai hotel operations but their property sale division is at a standstill because foreign purchasers are no longer certain they can create the legal structures to assure their ownership of freehold property.

¶10. (C) DBS and UOB banks both made major investments in Thailand following the 1997 financial crisis, purchasing distressed banks and adding additional capital and management to try and nurse them back to health. While UOB is satisfied with their investment and said they have felt no discrimination as a Singapore-based institution, DBS has faced some problems. First, they sold their interest in OK Capital, a consumer finance joint venture with Shin Corp, back to Shin following the Temasek transaction. This was because of their concern about the FBA regulations. Second, DBS sought to increase their 16 percent interest in Thai Military Bank (TMB) when that institution raised additional capital earlier this year. While foreigners are allowed to buy up to 25 percent of a Thai bank with approval from the Ministry of Finance and the Bank of Thailand, this permission was denied to DBS because of the political concerns of the Thais that further Singapore investment was politically difficult in the wake of the Shin/Temasek deal, especially since DBS is 28 percent owned by Temasek. DBS' board member for TMB said that he believes uncertainty about Thailand as a safe investment destination will last until at least new elections.

Comment

¶11. (C) The Singaporeans we met feel that they have been unfairly singled out and that, in any case, the RTG "should not mistreat investors." That said, there is clearly reluctance in the Singapore government to publicly raise how they feel and are clearly hoping that the U.S. will do it for

them. Charles Ong did say that he expected Minister Mentor Lee to call "his old friend and fellow former PM" privy councilor Prem to discuss the matter. Deputy PM Pridyathorn must move quickly to clarify the new rules of the FBA in order to regenerate investment flows beyond those in the manufacturing sector which are unaffected by the FBA. If Singapore's investors are standing back, we suspect that the same holds true for investors elsewhere as well. Under pressure to validate charges of corruption against Thaksin, the newly appointed government feels the political imperative to find legal fault with the Shin/Temasek deal. That goal could clash with the need to reassure international investors that Thailand remains a welcoming destination. Reconciling these conflicting aims is the biggest economic challenge faced by the Thai government.
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